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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 IN RE GOOGLE DIGITAL ) Case No. 5:20-cv-03556-BLF  
21 ADVERTISING ANTITRUST )  
22 LITIGATION )  
23 )  
24 )

IN RE GOOGLE DIGITAL ) Case No. 5:20-cv-08984-BLF  
PUBLISHER ANTITRUST )  
LITIGATION )  
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**[PROPOSED] STIPULATED EXPERT  
PROTOCOL**

1 Pursuant to Fed. R. Civ. P. 29, the parties, through their respective counsel of record, stipulate to  
2 the following order (the “Order”) regarding the scope of expert discovery in the above-captioned matters  
3 and all other matters subsequently consolidated with them (collectively, the “Actions”), subject to  
4 approval by the Court:

5 **I. GENERAL PROVISIONS**

6 This Order applies to all parties to the Actions. This Order provides the protocols applicable to  
7 conducting discovery relating to expert witnesses. Nothing in this Order shall preclude any party from  
8 seeking to modify it later for good cause; prior to doing so, however, counsel of record shall meet and  
9 confer among themselves in a good-faith effort to reach agreement as to the appropriate scope of any  
10 modifications or revisions to this Order.

11 No subpoenas (for depositions or documents) need be served on any testifying expert from  
12 whom a report or declaration is provided. Instead, the party proffering such expert will (a) be  
13 responsible for producing all materials and information relied on by the expert, and (b) make the expert  
14 available for deposition at a time mutually agreed to by the parties and consistent with the Court’s  
15 scheduling orders.

16 **II. GOVERNING LAW**

17 Expert discovery shall be governed by the applicable provisions of the Federal Rules of Civil  
18 Procedure, except as otherwise provided herein or in any other order in these Actions. Unless modified  
19 herein, nothing in this Order shall be construed to abrogate, modify, or enlarge the Federal Rules of  
20 Civil Procedure.

21 **III. DISCOVERY RELATING TO EXPERTS**

22 **A. Expert-Related Materials To Be Disclosed**

23 1. Within three (3) business days of the service of any expert report or expert declaration  
24 pursuant to Federal Rule of Civil Procedure Rule 26(a)(2)(B) or otherwise, the party or  
25 parties proffering the expert shall produce:

- 1 a. a copy of the data or other information referred to therein or relied upon by the expert  
2 as a basis for the expert's opinions (to the extent not already produced in discovery),  
3 including, but not limited to, underlying data, spreadsheets (including formulas  
4 therein), computerized regression analysis and/or other underlying reports, programs,  
5 computer codes and schedules sufficient to reconstruct the work, calculations, and/or  
6 analyses upon which the expert witness is relying for their opinions;<sup>1</sup> and  
7 b. exhibits, information, or data processed or modeled by a computer at the direction of  
8 an expert, to the extent relied upon as a basis for the expert's opinions.
- 9 2. The information required by paragraph III.A.1 above shall be produced electronically (via  
10 email or FTP site) where feasible. Data, statistical analyses, or other information (including  
11 any calculation or exhibit) upon which an expert relies for any of their opinion(s) in this  
12 matter shall be provided in machine readable format, including any data that has been  
13 cleaned, reformatted, or modified in any way from the form in which it may have been  
14 provided to the expert. To the extent the disclosures in an expert report include, rely upon, or  
15 describe exhibits, information, or data processed or modeled by a computer at the direction of  
16 an expert in the course of and to the extent of such expert's reliance on such material for the  
17 expert's opinions, the party offering the expert's opinions must produce native copies of the  
18 data along with the appropriate instructions.
- 19 3. No party need produce programs, software, or instructions that are commercially available at  
20 a reasonable cost, as long as the party offering the expert's opinion provides timely and  
21 reasonable access for purposes of replication or analysis of disclosed results.

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24 <sup>1</sup> Notwithstanding the obligation to disclose documents, data, or other information "relied" on by the  
25 expert witness, documents, data, or other information that is merely "considered by" the expert witness  
does not need to be disclosed.

- 1       4. Documents that are publicly available need not be produced absent specific request, provided
- 2            that they are identified with sufficient specificity to allow the opposing side to locate and
- 3            obtain the document.
- 4       5. Documents that have previously been produced during discovery in these Actions need not
- 5            be produced if they are identified by Bates number.
- 6       6. Paragraphs III.A.1-2 above are not intended to limit the ability of any party to prepare and
- 7            use demonstrative exhibits, including demonstrative exhibits that may relate to an expert's
- 8            testimony, during the course of any deposition, hearing, or trial. The admissibility of any
- 9            such demonstrative exhibits shall be governed by the Federal Rules of Evidence, the Rules of
- 10            Civil Procedure, and this Court's Local Rules, unless otherwise provided by order of the
- 11            Court.

12       **B. Expert Materials Not Requiring Disclosure**

- 13       1. Notwithstanding the foregoing and the Federal Rules of Civil Procedure, the following
- 14            materials shall not be subject to discovery or disclosure by any method (including by
- 15            deposition):
  - 16            a. the content of communications among and between: (i) counsel and the expert and/or the
  - 17                expert's staff and/or supporting firms; (ii) counsel and any non-testifying expert
  - 18                consultant and/or the consultant's staff; (iii) the expert and other experts and/or other
  - 19                non-testifying expert consultants; (iv) experts and their staff and/or supporting firms; (v)
  - 20                non-testifying expert consultants and their staffs; (vi) any expert or non-testifying expert
  - 21                consultant and the staff or supporting firm of any other expert or non-testifying expert; or
  - 22                (vii) the respective staffs and/or supporting firms of experts or non-testifying expert
  - 23                consultants and the staffs and/or supporting firms of other experts or non-testifying expert
  - 24                consultants;

- b. notes, drafts, written communications, or other records of preliminary work created by, or for, experts or non-testifying expert consultants;
- c. drafts of: expert reports, affidavits, declarations, or other expert materials, including, without limitation, draft studies, analyses, opinions, or written expert testimony; draft expert work papers prepared in connection with the litigation; preliminary or intermediate calculations, computations, modeling, or data runs prepared in connection with the litigation; or other preliminary expert opinions or any communication between an expert and their staff, assistants, or agents and any other expert retained by the party, including their staff, assistants, or agents; draft materials prepared by, for, or at the direction of an expert witness; and
- d. any comments, whether oral or written, related to a report, affidavit or declaration or draft report, affidavit, or declaration of an expert witness prepared in connection with the litigation by (i) counsel for a party retaining the expert witness, (ii) an expert consultant, (iii) any person working at the direction of an expert witness, (iv) any other expert witness, (v) any other expert consultant, or (vi) any person working at the direction of another expert witness or expert consultant—except to the extent such comments were relied upon by the expert as a basis for the expert’s opinions;
- e. budgets, invoices, bills, receipts, or time records concerning testifying or non-testifying expert witnesses or consultants, their staff, assistants, colleagues, or associates, or their companies or organizations; and

2. The parties are not required to produce or exchange logs reflecting any of the aforementioned items that are not subject to discovery or production pursuant to this Order.
3. The foregoing exclusions from expert discovery will not apply to any information, communications, or documents upon which the expert relies as a basis for their opinion. All

1 information, communications, or documents upon which the expert relies as a basis for their  
2 opinion are discoverable.

3 4. Nothing herein relieves an expert or party of the duty to identify the facts, data, and  
assumptions that the expert relied upon as a basis for their opinions.

5 **IT IS SO STIPULATED, through Counsel of Record.**

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7 Dated: June 24, 2021

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19 Dated: June 24, 2021

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27 Dated: June 24, 2021

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[PROPOSED] STIPULATED EXPERT PROTOCOL  
CASE NOS. 5:20-CV-03556-BLF and 5:20-cv-08984-BLF

### ATTESTATION

I, Caitlin G. Coslett, am the ECF User whose ID and password are being used to file the foregoing document in Case No. 5:20-cv-08984-BLF. In compliance with Civil Local Rule 5-1(i)(3), I attest that concurrence in this filing has been obtained from all signatories above.

By: /s/ Caitlin G. Coslett

### ATTESTATION

I, Dena C. Sharp, am the ECF User whose ID and password are being used to file the foregoing document in Case No. 5:20-cv-03556-BLF. In compliance with Civil Local Rule 5-1(i)(3), I attest that concurrence in this filing has been obtained from all signatories above.

By: /s/ Dena C. Sharp

1 [PROPOSED] ORDER  
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Hon. Beth L. Freeman  
United States District Judge